

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

LORI M. METZSCH,)	8:02CV592
)	
Plaintiff,)	MEMORANDUM
vs.)	AND ORDER
)	
AVAYA, INC.,)	
)	
Defendant.)	

The plaintiff has filed a motion to require the defendant to accept \$400.00 in partial satisfaction of a judgment for taxable costs in the amount of \$1,855.75 that was entered on November 8, 2004. The motion also contains a request that interest not accrue on the judgment because the defendant allegedly failed to accept full payment between April 26, 2005, and May 2, 2005.

The motion will be denied in all respects. It is the defendant's prerogative not to accept a partial payment. The defendant's alleged failure to accept full payment is another matter, but the plaintiff has failed to show that she made an unconditional tender of payment. Instead, the plaintiff's evidence shows that she demanded the defendant's attorney of record to sign a notarized receipt, which he was not willing to do. Regardless of whether counsel's refusal to execute an acknowledgment was reasonable, his position was legally correct.

The plaintiff has also asked leave to amend her motion to request that she be designated as the party responsible for filing the partial satisfaction of judgment rather than the defendant. Because the proposed amendment does not correct either defect noted above, the motion for leave to amend will be denied as futile.

Accordingly,

IT IS ORDERED that:

1. Plaintiff's motion for relief from judgment (filing 361) is denied; and
2. Plaintiff's motion for leave to amend (filing 364) is denied.

August 9, 2007.

BY THE COURT:

s/ Joseph F. Bataillon

United States District Judge